

~~ORIGINAL~~

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 9 EXP. CO, LTD., Plaintiff.

ORIGINAL
 FILED
 APR 18 2008
 RICHARD W. WILKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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11 SHANGHAI WIN-WING IMP. &
 12 EXP. CO, LTD.,

13 Plaintiff,

14 vs.

15 TETSUYA WATANABE, OAKHILLS
 16 HARDWOOD FLOORS, INC., K&T
 17 ASSOCIATES, INC.

Defendants.

CV NO. 08

2031

COMPLAINT

18
 19 Plaintiff Shanghai Win-Wing Imp. & Exp. Co., Ltd.,
 20 (hereinafter "Win-Wing"), for its Complaint against Defendants
 21 Tetsuya Watanabe, Oakhills Hardwood Floors, Inc. and K&T
 22 Associates, Inc. (hereinafter collectively "Defendants"), states
 23 as follows:

INTRODUCTION

24 This is an action for money owed to Win-Wing for goods
 25 purchased from Win-Wing and shipped to Defendant K&T Associates,
 26 Inc. (hereafter "K&T").

27
 28 This is also an action for breach of a guaranty of the

1 above-stated debt by Defendant Oakhills Hardwood Floors, Inc.
2 (hereinafter "Oakhills"), as well as an action for intentional
3 misrepresentation against Defendant Tetsuya Watanabe (hereinafter
4 "Mr. Watanabe") in connection with that guaranty.

5 PARTIES

6 1. Plaintiff Shanghai Win-Wing Imp. & Exp. Co., Ltd.,
7 (hereinafter "Win-Wing") is a manufacturer and exporter of wood
8 flooring, and is located in the Peoples Republic of China.

9 2. Defendant K&T Associates, Inc. (hereafter "K&T")
10 is an inactive corporation that was registered in the State of
11 Washington, with its principle place of business at 8911 NE 151st
12 Pl., Bothell, WA 98011, is an importer and seller of wood
13 flooring, was a customer of Win-Wing, and upon information and
14 belief was owned and operated by Defendant Tetsuya Watanabe.

15 3. Defendant Oakhills Hardwood Floors, Inc.
16 (hereinafter "Oakhills") is an active corporation registered in
17 the State of California, with its principle place of business at
18 6650 Goodyear Rd., Benicia, CA 94510, and upon information and
19 belief is owned and operated by Defendant Tetsuya Watanabe.

20 4. Defendant Tetsuya Watanabe (hereinafter "Mr.
21 Watanabe") upon information and belief is a resident of
22 California, with a last known address of 6650 Goodyear Rd.,
23 Benicia, CA 94510, and upon information and belief is the owner
24 and operator of K&T and Oakhills, and controlled the assets of
25 both companies.

26 JURISDICTION

27 5. This Court has jurisdiction over this matter
28 pursuant to the provisions of 28 U.S.C. §1332(a) (2) because

1 complete diversity of citizenship exists between the parties, as
2 Win-Wing is a citizen of the Peoples Republic of China, and as
3 Defendants Oakhills and Mr. Watanabe are citizens of the State of
4 California, and Defendant K&T was a citizen of the State of
5 Washington.

6. The amount in controversy exceeds the sum or value
7 of Seventy Five Thousand Dollars and no cents (\$75,000.00)
8 exclusive of court costs and interest, and is between a citizen
9 of the Peoples Republic of China and citizens of the State of
10 California and the State of Washington.

11. 7. Venue is proper in this Court pursuant to 28
12 U.S.C. §1331(a)(1), (2), and (3) in that Defendants Oakhills and
13 Mr. Watanabe reside in California, a substantial portion of the
14 activity that is subject to this action is situated in this
15 judicial district, and all Defendants are subject to personal
16 jurisdiction in this judicial district.

17. 8. Venue is also proper in this Court pursuant to 28
18 USC §1331(a)(2) because complete diversity of citizenship exists
19 between the parties as above mentioned.

20 **FACTUAL BACKGROUND**

21 **The Underlying Transaction**

22 9. From June 9, 2006 to June 27, 2006, K&T issued
23 several Purchase Orders, under which K&T agreed to and Win-Wing
24 agreed to sell certain wood flooring products.

25 10. From approximately August 27, 2006 to
26 approximately September 17, 2006, Win-Wing shipped the wood
27 flooring products ordered by K&T from China to Long Beach,
28 California, where the product was received by K&T. Win-Wing

1 issued corresponding Commercial Invoices contemporaneously with
2 each shipment.

3 11. Payments were due for the above-shipped products,
4 pursuant to the Purchase Orders, sixty (60) days after shipment.

5 12. As of approximately November 17, 2006, an
6 outstanding balance of \$394,995.20 remained due and owing by K&T
7 to Win-Wing under the Purchase Orders, Commercial Invoices and
8 corresponding shipments.

9 The Settlement Agreement by K&T, the Guaranty of
10 Oakhills, and the Misrepresentations by Mr. Watanabe

11 13. On or about February 2007, Mr. Watanabe executed a
12 settlement agreement on behalf of K&T and a guaranty on behalf of
13 Oakhills, under which K&T agreed to pay \$352,717.15 to Win-Wing
14 pursuant to a payment plan, and under which Oakhill guaranteed
15 said payment plan. An authentic duplicate of this settlement
16 agreement, payment plan and guaranty is attached hereto as
17 Exhibit 1.

18 14. Pursuant to the terms of said settlement
19 agreement, K&T agreed to the following payment plan:

- 20 1. February 2007 - \$2,000.00
- 21 2. March 2007 - \$20,000.00
- 22 3. April 2007 - \$30,000.00
- 23 4. May 2007 - \$30,000.00
- 24 5. June 2007 - \$30,000.00
- 25 6. July 2007 - \$30,000.00
- 26 7. August 2007 - \$42,143.43
- 27 8. September 2007 - \$42,143.43
- 28 9. October 2007 - \$42,143.43

10. November 2007 - \$42,143.43

11. December 2007 - \$42,143.43

15. Pursuant to the terms of said agreement, Oakhills
4 contractually agreed to guaranty the above-stated payment plan.

16. Mr. Watanabe signed the settlement agreement and
6 payment plan on behalf of K&T, and signed the guaranty on behalf
7 of Oakhills.

17. At the time Mr. Watanabe signed the settlement
9 agreement, payment plan, and guaranty, he knew that neither K&T
10 nor Oakhills would satisfy the agreement.

18. Mr. Watanabe signed the settlement agreement,
12 payment plan and guaranty to stall legal action against K&T, as a
13 means of delay, and with the purpose and intent of defrauding
14 Win-Wing.

19. K&T and/or Oakhills, through Mr. Watanabe made one
16 payment of \$10,000.00 toward the settlement agreement, payment
17 plan and guaranty, leaving a remaining outstanding unpaid balance
18 of \$342,717.15.

19 **COUNT ONE - BREACH OF CONTRACT**

20 **(Against K&T)**

21 20. Win-Wing incorporates by reference as though fully
22 rewritten herein the allegations contained within Paragraphs 1
23 through 19 above.

24 21. As a direct and proximate result of K&T's breaches
25 of its contractual obligations under the Purchase Orders,
26 Commercial Invoices and corresponding shipments, Win-Wing has
27 suffered damages in excess of \$384,995.20, plus interest, costs
28 and attorney fees.

1 22. The total amount due to Win-Wing by K&T under the
2 Purchase Orders, Commercial Invoices and corresponding shipments,
3 as of November 17, 2006, is \$384,995.20, together with interest,
4 costs, and attorney fees incurred thereafter.

5 **COUNT TWO - ACTION ON ACCOUNT**

6 **(Against K&T)**

7 23. Win-Wing incorporates by reference as though fully
8 rewritten herein the allegations contained within Paragraphs 1
9 through 22 above.

10 24. Attached hereto as Exhibit 1, and incorporated
11 herein by reference, is a Statement of Account for which K&T is
12 in debt to Win-Wing.

13 25. This Account is kept in the regular course of
14 business and is a true and accurate reflection of the debt owed
15 by K&T to Win-Wing, and has been acknowledged and signed by Mr.
16 Watanabe, on behalf of K&T.

17 26. As a direct and proximate result of K&T's failure
18 to pay this debt, Win-Wing has been damaged in the amount of
19 \$384,995.20, plus interest, costs and attorney fees.

20 **COUNT THREE - UNJUST ENRICHMENT**

21 **(Against K&T)**

22 27. Win-Wing incorporates by reference as though fully
23 rewritten herein the allegations contained within Paragraphs 1
24 through 26 above.

25 28. At all relevant times, K&T and Win-Wing contracted
26 for and Win-Wing provided to K&T with certain goods.

1 29. Win-Wing has performed all of its duties and
2 obligations under the terms and conditions of the parties'
3 contractual relationship.

4 30. Win-Wing has contacted K&T regarding overdue
5 invoices for the above aforementioned goods, and requested
6 payment. K&T has refused to pay the amount due and owing to Win-
7 Wing for said goods.

8 31. As a direct and proximate result of K&T's failure
9 to pay for the goods provided by Win-Wing, K&T has been unjustly
10 enriched, and Win-Wing correspondingly damaged, in the amount of
11 \$384,995.20, plus interest, costs and attorney fees.

12 **COUNT FOUR - BREACH OF SETTLEMENT AGREEMENT**

13 **(Against K&T)**

14 32. Win-Wing incorporates by reference as though fully
15 rewritten herein the allegations contained within Paragraphs 1
16 through 31 above.

17 33. On or about February 2007, Mr. Watanabe executed a
18 settlement agreement on behalf of K&T, under which K&T agreed to
19 pay \$352,717.15 to Win-Wing pursuant to a payment plan. An
20 authentic duplicate of this settlement agreement and payment plan
21 is attached hereto as Exhibit 1.

22 34. K&T and/or Oakhills, through Mr. Watanabe made one
23 payment of \$10,000.00 toward the settlement agreement and payment
24 plan and guaranty, leaving a remaining outstanding unpaid balance
25 of \$342,717.15.

26 35. K&T contractually agreed to resolve any disputes
27 between the parties, arising under the above-referenced Purchase
28 Orders, Commercial Invoices, and corresponding shipments,

1 pursuant to the terms of the settlement agreement and payment
2 plan set forth in Exhibit 1.

3 36. The settlement agreement and payment plan offered
4 by K&T, and accepted by Win-Wing, is a binding and contractually
5 enforceable settlement agreement.

6 37. K&T has breached the settlement agreement and
7 payment plan, by failing to make payment of \$342,717.15, which is
8 past due under said settlement agreement and payment plan.

9 38. The settlement agreement and payment plan also
10 provided that K&T pay to Win-Wing contractual interest from
11 February 2006, as well as any exchange rate charge.

12 39. As a direct and proximate result of K&T's breaches
13 of its contractual obligations under the settlement agreement and
14 payment plan, Win-Wing has suffered damages in excess of
15 \$342,717.15, plus interest, costs and attorney fees.

COUNT FIVE - BREACH OF GUARANTY

(Against Oakhills)

18 40. Win-Wing incorporates by reference as though fully
19 rewritten herein the allegations contained within Paragraphs 1
20 through 39 above.

21 41. On or about February 2007, Mr. Watanabe executed a
22 guaranty on behalf of Oakhills, under which Oakhill guaranteed
23 K&T's payment of \$352,717.15, plus contractual interest from
24 February 2006 and any exchange rate charge, pursuant to a
25 settlement agreement and payment plan agreed to by K&T. An
26 authentic duplicate of this guaranty is attached hereto as
27 Exhibit 1.

1 42. K&T and/or Oakhills, through Mr. Watanabe made one
2 payment of \$10,000.00 toward the settlement agreement, payment
3 plan and guaranty, leaving a remaining outstanding unpaid balance
4 of \$342,717.15 plus interest.

5 43. Oakhills contractually agreed to guaranty payment
6 of \$342,717.15 plus interest to Win-Wing, pursuant to the terms
7 of the guaranty set forth in Exhibit 1.

8 44. The guaranty offered by Oakhills, and accepted by
9 Win-Wing, is a binding and contractually enforceable agreement.

10 45. Oakhills has breached the guaranty, by failing to
11 make payment of \$342,717.15 plus interest, which is now past due
12 under said guaranty.

13 46. As a direct and proximate result of Oakhills'
14 breaches of its contractual obligations under the guaranty, Win-
15 Wing has suffered damages in excess of \$342,717.15, plus
16 interest, costs and attorney fees.

17 **COUNT SIX - FRAUDULENT AND INTENTION MISREPRESENTATION**

18 **(against Mr. Watanabe)**

19 47. Win-Wing incorporates by reference as though fully
20 rewritten herein the allegations contained within Paragraphs 1
21 through 46 above.

22 48. On or about February 2007, Mr. Watanabe executed a
23 settlement agreement on behalf of K&T and a guaranty on behalf of
24 Oakhills, under which K&T agreed to pay \$352,717.15 plus interest
25 to Win-Wing pursuant to a payment plan, and under which Oakhills
26 guarantied said payment plan.

27 49. At the time Mr. Watanabe signed the settlement
28 agreement, payment plan and guaranty, he knew that neither K&T

1 nor Oakhills would satisfy the agreement.

2 50. Mr. Watanabe signed the settlement agreement,
3 payment plan and guaranty to stall legal action against K&T, as a
4 means of delay, and with the purpose and intent of defrauding
5 Win-Wing.

6 51. K&T and/or Oakhills, through Mr. Watanabe made one
7 payment of \$10,000.00 toward the settlement agreement, payment
8 plan and guaranty, leaving a remaining outstanding unpaid balance
9 of \$342,717.15 plus interest

10 52. In executing the settlement agreement, payment
11 plan and guaranty, Mr. Watanabe represented to the Win-Wing that
12 it would be paid \$352,717.15 plus interest. This was an
13 important fact which Mr. Watanabe represented to be true;
14 however, said representation was false, and Mr. Watanabe knew
15 that the representation was false when he made it, or he made the
16 representation recklessly and without regard for its veracity.

17 53. Mr. Watanabe intended that Win-Wing rely on the
18 representation, and Win-Wing reasonably relied on the
19 representation. As a result, Win-Wing was harmed, and its
20 reliance on the Mr. Watanabe's representation was a substantial
21 factor in causing that harm to Win-Wing.

22 54. As a direct and proximate result of Mr. Watanabe's
23 intentional misrepresentations, Win-Wing has suffered damages in
24 excess of \$342,717.15, plus interest, costs and attorney fees.

25 55. In making such fraudulent and intentional
26 misrepresentations, Mr. Watanabe has acted with malice, conscious
27 indifference to the rights of Win-Wing, or reckless disregard of
28 such rights, and Mr. Watanabe's misrepresentations were so

1 willful and wanton as to support a claim for punitive damages.

2 56. Mr. Watanabe's fraudulent and intentional
3 misrepresentations support an award of punitive damages, as his
4 conduct was sufficiently aggravated to satisfy the standard for
5 an award of punitive damages.

6 57. Mr. Watanabe's fraudulent and intentional
7 misrepresentations support an award of at least two times the
8 estimated actual damages, and therefore Win-Wing is entitled to
9 punitive damages likely in excess of \$685,434.30, plus interest,
10 costs, and attorney fees to the extent permitted by law.

11 WHEREFORE, Plaintiff Shanghai Win-Wing Imp. & Exp. Co.,
12 Ltd. requests this Court enter Judgment in its favor and against
13 Defendant K&T Associates, Inc. in the amount of \$384,995.20, plus
14 interest, costs and attorney fees as to Counts One, Two, and
15 Three of this Complaint; and such further relief as is just and
16 equitable.

17 FURTHER, Plaintiff Shanghai Win-Wing Imp. & Exp. Co.,
18 Ltd., prays as follows:

19 1. For Judgment in its favor and against Defendants
20 K&T Associates, Inc., Oakhills Hardwood Floors,
21 Inc. and Tetsuya Watanabe in the amount of
22 \$342,717.15, plus interest, costs and attorney
23 fees as to Counts Four, Five and Six of this
24 Complaint; and

25 2. For such further relief as is just and equitable.

26 FURTHER, Plaintiff Shanghai Win-Wing Imp. & Exp. Co.,
27 Ltd., prays as follows:

28 1. For Judgment in its favor and against Defendant

1 Tetsuya Watanabe in the amount of \$685,434.30 in
2 punitive damages, plus interest, costs and
3 attorney fees as to Count Six of this Complaint;
4 and

5 2. For such further relief as is just and equitable.
6

7 Dated: April 16, 2008

COREY & COREY

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9 _____
10 By: Edward E. Corey
11 Attorneys for Plaintiff
12 Shanghai Win-Wing Imp. & Exp.
13 Co., Ltd.
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2007- 3-26 11:08

ADC20070150 NO. 497 P.1

K&T Associates Inc.
P.O. Box 5906, Concord, CA 94524

INVOICE NUMBER	PO NUMBER	SMOOTH AMOUNT
F626NL243/246/254	#286776;288764;288772	\$131,973.6
F626NL260	#287315;287312	\$87,982.40
F626NL269/270	#288757;288765;288766;288769	\$175,039.2
Total Amount:		\$394,995.2

Payment Schedule

February - \$2,000.00

March - \$20,000.00

April to July - \$30,000.00 per month

August - December - \$42,143.43 per month

Finished pay back Win-Wing Total Amount \$352,717.15 (This money is Win-Wing's cost already deduct our commissoin) by end 2007 year.

Because of delayed payment, all the interest and exchange rate charge occurred during above-mentioned period of time will bear to our K&T account.

If K&T Associates Inc.'s business is not so good, Oakhills Hardwood Floors must instead of K&T Associates Inc. return above-mentioned the money to Win-Wing.

Tetsuya Watanabe
K&T Associates, Inc.

Tetsuya Watanabe
Oakhills Hardwood Floors.

EXHIBIT

tables